

HON. THOMAS O. RICE

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

GINA L. BRITTON, a single woman,
JEREMY N. LARSON, a single man, and
on behalf of others similarly situated,

Plaintiffs,

vs.

SERVICELINK FIELD SERVICES,
LLC, formerly known as LPS FIELD
SERVICES, INC.

Defendant.

NO. 2-18-cv-00041-TOR

SECOND AMENDED COMPLAINT
FOR CLASS ACTION AND DAMAGES

Plaintiffs GINA L. BRITTON, a single woman, and JEREMY N. LARSON, a single man in his individual capacity, and on behalf of others similarly situated, through their attorneys of record, Jeffers, Danielson, Sonn & Aylward, P.S., by Clay M. Gatens and Devon A. Gray, Daudt Law, P.L.L.C. by Michael M. Daudt, and Terrell Marshall Law Group, P.L.L.C. by Beth E. Terrell and Blythe H. Chandler, bring this Complaint for Class Action and Damages against ServiceLink Field Services, LLC, formerly known as LPS

SECOND AMENDED COMPLAINT FOR CLASS
ACTION AND DAMAGES

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Field Services, Inc., and allege as follows:

I. NATURE OF THE CASE

1.1 ServiceLink Field Services, LLC, formerly known as LPS Field Services, Inc., contracts with mortgage lending and servicing institutions to conduct services on default and pre-foreclosure properties located throughout Washington State that are subject to loans owned, held, or serviced by lending or servicing institutions. ServiceLink Field Services, LLC, is the successor in interest to LPS Field Services, Inc., which was the entity involved in the events detailed herein, for convenience and clarity this Complaint refers to the Defendant as “LPS Field Services.”

1.2 Specifically, LPS Field Services is hired by lending and servicing institutions to (among other things) determine the occupancy status of properties, secure properties deemed vacant or abandoned by LPS Field Services, remove personal property from within the property, and provide miscellaneous other so-called “property preservation services.”

1.3 LPS Field Services charges and receives fees for these services from its clients and profits from these fees.

1.4 Such services include but are not limited to: forcibly entering the property to change locks, replace or board up doors and windows, drain water from pipes, eliminate building or other code violations or dangerous conditions, remove personal property and “debris,” install damaging stickers, and turn utilities on and off.

1.5 Lenders and loan servicers’ purported right to enter a borrower’s property for

1 the purpose of conducting these services is allegedly derived from provisions in the form
2 contract deed of trust encumbering the borrower's property (the "Entry Provisions"). LPS
3 Field Services purportedly derives its alleged right to trespass upon and enter borrowers'
4 homes from its lender and loan servicer clients. LPS Field Services relies on the Entry
5 Provisions to enter borrowers' properties and conduct services and it is under these form
6 provisions that LPS Field Services commits the above-described "property preservation
7 services."

8 1.6 On July 7, 2016, in *Jordan v. Nationstar Mortgage, LLC*, 185 Wn.2d 876
9 (2016) (the "*Jordan* Decision"), the Washington State Supreme Court deemed such form
10 deed of trust provisions unenforceable as contrary to Washington State law, thereby
11 eroding any purported legal justification for LPS Field Services to even enter upon
12 borrowers' properties.

13 1.7 But even setting aside the unenforceability of these form Entry Provisions, the
14 form Entry Provisions as written do not permit LPS Field Services' to damage, destroy, or
15 convert borrowers' property and/or deny the full use and enjoyment of borrowers' real
16 and/or personal property prior to the completion of foreclosure.

17 1.8 However, LPS Field Services has a common course of conduct whereby it
18 wrongfully and forcibly enters borrowers' properties prior to completion of a foreclosure
19 to perform destructive and disruptive acts, including destroying the existing lock(s) on a
20 borrower's home, removing the borrower's destroyed locks from the home, rummaging

1 through, “trashing out” and damaging property inside the home, and removing the
2 borrower’s personal property from the home and property.

3 1.9 These actions result in damage to the borrower’s real and personal property,
4 conversion of the borrower’s personal property, and interference with the borrower’s full
5 use and enjoyment of their real and personal property.

6 1.10 LPS Field Services charges and receives fees for these services from its clients
7 and profits from these fees.

8 1.11 LPS Field Services’ common course of conduct and actions are widespread
9 throughout Washington.

10 1.12 Thus, not only does LPS Field Services have no legal right to be present on
11 borrowers’ properties in advance of the completion of any foreclosure proceedings, but
12 LPS Field Services regularly acts beyond the scope of the unenforceable and illegal form
13 deed of trust provisions relied upon by LPS Field Services.

14 1.13 LPS Field Services’ common course of conduct and common practices violate
15 Washington law.

16 II. PARTIES

17 2.1 Representative Plaintiff Gina L. Britton. GINA L. BRITTON, formerly
18 known as Gina L. Cargile (“Plaintiff Britton”), is a single woman who owned real property
19 located at 35 East Walton Ave., Spokane, Washington (the “Britton Property”).

20 2.2 Ms. Britton has agreed to act as a Class Representative in this matter as

1 “Plaintiff Britton” or “Representative Plaintiff Britton.”

2 2.3 Representative Plaintiff Larson. JEREMY N. LARSON, owns and at all
3 times material hereto owned real property located at 5501 NE 49th Street, Vancouver,
4 Washington (the “Larson Property”).

5 2.4 Mr. Larson has agreed to act as a Class Representative in this matter as
6 “Plaintiff Larson” or “Representative Plaintiff Larson.”

7 2.5 Defendant. Defendant SERVICELINK FIELD SERVICES, LLC, formerly
8 known as LPS FIELD SERVICES PROPERTIES, INC. (“LPS Field Services” or
9 “Defendant”) is a Delaware limited liability company, with its principal place of business
10 at 10385 Westmoor Drive, Westminster, CO 80021.

11 2.6 LPS Field Services transacts business throughout the state of Washington, and
12 contracts with and employs agents throughout Washington to provide property inspection
13 and preservation services for homes located in Washington that are in default under the
14 terms of their loan agreement, but which homes have not been foreclosed upon.

15 2.7 LPS Field Services receives payments and/or profits from the above-described
16 business it transacts throughout the state of Washington.

17 2.8 LPS Field Services is a citizen of Delaware and Colorado.

18 2.9 LPS Field Services is one of the nation’s largest privately-held mortgage field
19 services providers.

20 2.10 For purposes of this Complaint, any references to LPS Field Services shall

mean such acts and practices that were performed by LPS Field Services, its employees, agents, representatives, vendors, subcontractors and all persons or entities directly or indirectly under LPS Field Services' control.

III. JURISDICTION AND VENUE

3.1 This is an action for damages. Jurisdiction and venue are appropriate in this Court pursuant to RCW 4.12.010, RCW 4.12.020, and 28 U.S.C. § 1332.

IV. BACKGROUND REGARDING LPS FIELD SERVICES' COMMON POLICIES AND PRACTICES

4.1 For purposes of this Complaint, "default properties" shall refer to homes where the borrower is in default on their mortgage, but no foreclosure has been initiated.

4.2 Properties "pre-foreclosure" shall refer to homes where a judicial or non-judicial foreclosure has been initiated, but not completed.

4.3 "Foreclosed properties" shall refer to properties that have had a judicial or non-judicial foreclosure completed and a foreclosure and sale at law has been completed.

LPS Field Services' Unfair and Deceptive Business Practices

4.4 On its website, LPS Field Services advertises its services to potential clients as follows:

[LPS Field Services] is a national field service company offering a complete range of superior property inspection, preservation and asset registration services. [LPS Field Services] helps servicers satisfy loan services requirements by addressing the ongoing service challenges they continually face. With additional rules bearing down on the industry, we have the

1 skilled staff and advanced information technology to coordinate
2 and provide field services in every state and locality where our
clients service loans.

3 www.svclnk.com/default/field-services/ (last accessed December 14, 2017)

4 4.5 LPS Field Services provides to mortgage lenders and servicers property
5 inspection and preservation and maintenance services for default, pre-foreclosure, and
6 foreclosed properties.

7 4.6 All borrowers upon whose property LPS Field Services enters are subject to
8 substantively the same form deed of trust Entry Provisions that LPS Field Services relies
9 upon to: (i) enter borrowers' properties in the event of default but prior to completion of
10 foreclosure; and (ii) conduct its illegal services.

11 4.7 As will be further explained, on July 7, 2016, in *Jordan v. Nationstar*
12 *Mortgage, LLC*, the Washington State Supreme Court held such form deed of trust Entry
13 Provisions unenforceable as contrary to Washington State law, thereby eroding any
14 purported legal justification for LPS Field Services' entry onto borrowers' properties,
15 forcible entry into the borrowers' homes, removal of borrowers' locks, installation of LPS
16 Field Services' lock and lock boxes, damage to borrowers' homes, and conversion of
17 borrowers' personal property prior to the completion of foreclosure.

18 **LPS Field Services' Retention of Vendors**

19 4.8 LPS Field Services' involvement with a residential property usually begins
20 once a homeowner becomes delinquent or defaults on his or her mortgage.

1 4.9 Upon that occurrence, LPS Field Services is retained by a lending or servicing
2 institution to perform inspection and property preservation services on the home.

3 4.10 LPS Field Services performs such services through a network of vendors
4 trained and supervised by LPS Field Services via a common set of practices.

5 4.11 LPS Field Services receives fees and/or profits from performing such services
6 and training and supervising its network of vendors.

7 4.12 Upon a Washington borrower's delinquency or default, LPS Field Services
8 will instruct a Washington-based field services vendor to inspect the home to determine its
9 occupancy status.

10 4.13 On information and belief, LPS Field Services does not instruct its vendors
11 on making determinations or distinctions between "vacant" homes versus "abandoned"
12 homes.

13 4.14 On information and belief, once the home is deemed "vacant" or
14 "abandoned," LPS Field Services instructs its vendors to forcibly enter the home and other
15 buildings and perform services, such as securing buildings by boarding up the doorway or
16 windows, turning off utilities, and placing lockboxes, hasps, or padlocks on the doors to
17 the home and other buildings.

18 4.15 On information and belief, such common instructions also include that the
19 vendor should forcibly enter the home to perform destructive acts, including destroying
20 existing lock(s) on a home or building, damaging doors or windows to obtain entry, and

1 removing personal property found in and around the home and in and around other
2 buildings.

3 4.16 These common actions result in damage to the borrower's real and personal
4 property, interference with the borrower's full use and enjoyment of their property,
5 conversion of personal property located within the home, and they exceed the scope of any
6 form deed of trust Entry Provision relied upon by LPS Field Services when instructing its
7 agents to conduct preservation services upon a borrower's home.

8 4.17 Vendors perform these services as agents of LPS Field Services and pursuant
9 to specific common orders and directives from LPS Field Services.

10 4.18 On information and belief, despite extensive use of vendors and strict control
11 over the vendors, LPS Field Services has no common practice of adequately training or
12 supervising its vendors.

13 4.19 On information and belief, LPS Field Services has no common practice of
14 screening its vendors' employees by way of reviewing qualifications or performing a
15 background check that would uncover any criminal history.

16 **LPS Field Services' Process for Determining Occupancy Status and Securing Default**
17 **and Pre-Foreclosure Homes**

18 4.20 On information and belief, LPS Field Services' process in inspecting and
19 securing a default or pre-foreclosure home starts when LPS Field Services orders a vendor
20 to determine the occupancy status of the home.

1 4.21 On information and belief, LPS Field Services does not provide its vendors
2 with clear standards for determining the occupancy status of the home.

3 4.22 On information and belief, LPS Field Services or its vendors frequently make
4 inaccurate determinations regarding the occupancy status of a home.

5 4.23 On information and belief, if LPS Field Services or its vendor deems the home
6 vacant or abandoned, LPS Field Services automatically orders its vendor to gain access to
7 the home by forcibly entering the home through locked doors or windows.

8 4.24 On information and belief, upon entry, LPS Field Services instructs its
9 vendors to remove all personal property and belongings from the home. The act of
10 removing personal property and belongings found in the home is commonly known as
11 “trashing out” the home.

12 4.25 On information and belief, once a borrower’s home has been trashed out, LPS
13 Field Services does not require its vendors to store, preserve, or track the items that were
14 trashed out of the borrower’s home, and LPS Field Services does not have any practicing
15 policy or procedure for returning “trashed out” belongings and personal property to
16 borrowers.

17 4.26 LPS Field Services instructs its vendors to place their own locks and lock
18 boxes and/or its own locks and lock boxes on the borrower’s home and post a notice upon
19 the borrower’s home instructing the borrower to contact LPS Field Services for access to
20 the home.

1 4.27 When LPS Field Services learns that a homeowner wants access to his or her
2 home, LPS Field Services does not immediately provide access to the homeowner.

3 4.28 When LPS Field Services learns that a homeowner wants access to his or her
4 home, LPS Field Services does not immediately remove the locks that it had placed on the
5 home.

6 4.29 When LPS Field Services learns that a homeowner wants access to his or her
7 home, LPS Field Services does not restore the homeowner's locks to the home.

8 4.30 When LPS Field Services learns that a homeowner wants the personal
9 property that was removed from the home returned, LPS Field Services does not return the
10 personal property.

11 4.31 When LPS Field Services learns that a homeowner wants the damage to the
12 home repaired, LPS Field Services does not repair the damage.

13 4.32 On information and belief, even after learning of the *Jordan v. Nationstar*
14 *Mortg., LLC* decision, LPS Filed Services has not removed its locks, lockboxes, and hasps
15 from borrowers' home prior to the conclusion of any foreclosure, and has not affirmatively
16 reached out to any borrowers prior to the conclusion of any foreclosure to offer to restore
17 the exclusive possession of the home to the borrower.

18 4.33 LPS Field Services' common pattern and practice of using vendors to forcibly
19 enter default and pre-foreclosure homes, cause damage to the borrower's real and personal
20 property, convert the borrower's locks and personal property and belongings located within

1 the home, interfere with the borrower's full use and enjoyment of the home, maintain its
 2 locks, lockboxes, and hasps on the borrower's home even after the *Jordan* Decision prior
 3 to completion of a foreclosure, and obtain profits as a result of these actions is inequitable
 4 and unlawful and causes injury to Washington residents.

5 **LPS Field Services' Activities are Widespread**

6 4.34 LPS Field Services has a widespread common practice of forcible entry,
 7 resultant damage, removal of personal property from homes, and denial of the owner's full
 8 use and enjoyment of their home.

9 4.35 Various news reports detail specific examples of LPS Field Services' common
 10 practices.

11 4.36 In a 2015 article, borrowers reported returning home following LPS Field
 12 Services' forcible entry to find the house ransacked, priceless family heirlooms missing
 13 and personal possessions destroyed. [https://thinkprogress.org/why-a-bank-was-allowed-
 14 to-plunder-family-heirlooms-that-escaped-the-nazis-7c02d4e94216/](https://thinkprogress.org/why-a-bank-was-allowed-to-plunder-family-heirlooms-that-escaped-the-nazis-7c02d4e94216/).

15 4.37 This just a single sample of a long line of similar stories evidencing LPS Field
 16 Services' common pattern and practices.

17 **The Washington Supreme Court's Decision Invalidated the Deed of Trust Provisions**
 18 **in *Jordan v. Nationstar Mortgage, LLC*, No. 92081-8**

19 4.38 In 2012, a lawsuit entitled *Jordan v. Nationstar Mortgage, LLC*, was filed in
 20 Washington State Superior Court in Chelan County under Cause No. 12-2-00385-2. This

lawsuit challenged the legality and enforceability of the form deed of trust entry provisions relied upon by mortgage lenders and servicers to enter borrowers' homes and "secure" their properties upon default, abandonment, or vacancy.

4.39 Following the grant of class certification in 2014, counsel for Nationstar removed the Complaint to the United States District Court for the Eastern District of Washington, where it was assigned to the Hon. Thomas O. Rice under Cause No. 2:14-cv-00175-TOR.

4.40 In 2015, the parties filed cross-motions for partial summary judgment, and on August 10, 2015, Judge Rice issued an Order Certifying Questions to Washington Supreme Court on the following bases:

Put succinctly, this Court has been asked to decide whether so-called Entry Provisions within the deeds of trust of Plaintiff and other class members are enforceable under Washington law absent post-default consent of the borrower or permission from a court. Nationstar contends the Provisions—akin to a limited license or similar non-possessory interest in land—merely grant the lender the ability to enter, maintain, and secure the encumbered property and that such conduct does not constitute possession in violation of Washington's lien theory of mortgages. Ms. Jordan, on the other hand, contends the Entry Provisions unlawfully deprive a borrower of her exclusive right to possession prior to foreclosure and that the borrower cannot agree by contract to relinquish such right prior to default. Instead, Ms. Jordan asserts that the lender either must obtain post-default consent of the borrower or a court-appointed receiver pursuant to RCW chapter 7.60.

Because of the complexity of the state law issues presented in the parties' cross-motions for partial summary judgment and their

1 significant policy implications, this Court finds that the
2 Washington Supreme Court, which has not had occasion to settle
3 these issues, “is better qualified to answer the certified questions
4 in the first instance.” . . . Further, this Court finds the
5 Washington Supreme Court’s answers are “necessary . . . in order
6 to dispose of [this] proceeding.”

7 *Order Certifying Questions to Washington Supreme Court*, No. 2:14-cv-00175-TOR, at
8 pp. 3–4 (E. D. Wash., August 10, 2015) (internal citations omitted).

9 4.41 Judge Rice then certified, *inter alia*, the following question of law to the
10 Washington Supreme Court:

11 Under Washington’s lien theory of mortgages and RCW
12 7.28.230(1), can a borrower and lender enter into a contractual
13 agreement prior to default that allows the lender to enter,
14 maintain, and secure the encumbered property prior to
15 foreclosure?

16 *Id.* at p. 10.

17 4.42 On August 18, 2015, the Washington Supreme Court sent a letter accepting
18 Judge Rice’s Order Certifying Questions under Supreme Court No. 92081-8, and set a
19 briefing schedule for the parties.

20 4.43 The parties timely submitted their briefs, and oral argument took place
before the Washington Supreme Court on January 19, 2016.

4.44 On July 7, 2016, the Washington Supreme Court issued its *En Banc* Opinion
in *Jordan*, answering “the first certified question in the negative.” *Jordan*, 185 Wn.2d at
883. The Court explained, “Our case law is clear that Washington law prohibits a lender

1 from taking possession of property before foreclosure of the borrower's home." *Id.* at 884.
 2 The Court concluded that the deed of trust entry provisions allow the lender to take
 3 possession of the borrower's home in advance of the conclusion of a foreclosure of the
 4 borrower's home:

5 From any approach, we find that Nationstar's conduct
 6 constituted possession. . . . Nationstar's vendor's actions
 7 constituted possession because its actions are representative of
 8 control. The vendor drilled out Jordan's existing locks and
 9 replaced the lock with its own. . . . [A]lthough [Jordan] was able
 10 to obtain a key by calling, the process made Nationstar the
 11 "middle man." She could no longer access her home without
 12 going through Nationstar. . . . Nationstar effectively ousted
 13 Jordan by changing her locks, exercising control over the
 14 property. . . . Changing the locks is akin to exercising control,
 which is the key element of possession. By changing the locks,
 Nationstar took possession of the property. Since these actions
 are authorized by the entry provisions, the entry provisions allow
 the lender to take possession of the property. Because
 Washington law prohibits lenders from taking possession of the
 borrower's property before foreclosure, the provisions are in
 conflict with state law. Therefore, we must answer the first
 certified question in the negative and find that the entry
 provisions are unenforceable.

15 *Id.* at 888-89.

16 4.45 The Court concluded: "[T]he entry provisions are in direct conflict with state
 17 law and are unenforceable." *Id.* at 894.

18 4.46 On November 21, 2017, Chief Judge Thomas O. Rice of the United States
 19 District Court for the Eastern District of Washington granted in part Plaintiffs' Motion for
 20 Partial Summary Judgment in the *Jordan v. Nationstar Mortgage, LLC* case, holding as a

1 matter of law that (1) Nationstar committed intentional trespass, and (2) Nationstar violated
 2 Washington's Consumer Protection Act. The Court also held that the class is entitled to
 3 damages measured by (1) the cost of restoring each class member's home to its original
 4 state prior to rekeying the properties, and (2) the fair market rental value of each class
 5 member's home. *Order Granting in Part Plaintiff's Motion for Partial Summary*
 6 *Judgment*, No. 2:14-cv-0175-TOR (E.D. Wash. November 21 2017).

7 4.47 Based on *Jordan*, LPS Field Services has no legal right to engage in its
 8 common practice of forcible entry into pre-foreclosure homes, damage to borrowers' real
 9 and personal property, conversion of borrowers' personal property and belongings located
 10 within the home, and interference with borrowers' full use and enjoyment of their
 11 properties prior to the completion of a foreclosure.

12 4.48 Based on *Jordan*, LPS Field Services is liable to Washington borrowers' for
 13 the cost of restoring each class member's home to its original state prior to the re-keying
 14 of their properties, and (2) the fair market rental value of each class member's home.

15 **V. REPRESENTATIVE PLAINTIFFS**

16 5.1 Representative Plaintiffs Britton and Larson are just two examples of LPS
 17 Field Services' common pattern and practice of unlawfully entering upon borrowers'
 18 properties in advance of completed foreclosure proceedings, damaging borrowers' real
 19 property, converting borrowers' personal property, generating fees and profits from
 20 unlawful entries, and denying borrowers' the full use and enjoyment of their property prior

1 to completion of a foreclosure.

2 **Representative Plaintiff Gina L. Britton**

3 5.2 Plaintiff Britton is the former owner of real property located at 35 East
4 Walton Ave., Spokane, Washington (the “Britton Property”).

5 5.3 Plaintiff Britton was the owner of the Britton Property when it was entered
6 upon by LPS Field Services.

7 5.4 At the time of the entry, the loan securing the Britton Property was in default,
8 but no foreclosure proceedings had been initiated.

9 5.5 At the time of the entry, the form deed of trust provision purporting to
10 authorize LPS Field Services’ presence on the Britton Property in the event of default was
11 unenforceable as contrary to Washington State law.

12 5.6 At the time of the entry, Plaintiff Britton was in frequent communication with
13 the lender for the Britton Property.

14 5.7 At the time of the entry, the Britton Property was neither vacant nor
15 abandoned.

16 5.8 To gain entry to the Britton Property, LPS Field Services damaged the Britton
17 Property, including damaging locks and doors on the Britton Property.

18 5.9 While on the Britton Property, LPS Field Services changed the locks and
19 placed a lock-box upon the Britton Property. LPS Field Services also removed the existing
20 locks and damaged personal property on the Britton Property, including the lock that was

1 originally on the garage door.

2 5.10 Before leaving, LPS Field Services left stickers and placards inside and
3 outside of the Britton Property directing the owner to call LPS Field Services' phone
4 number for access to the Britton Property and additional information.

5 5.11 Upon returning to the Britton Property, Plaintiff Britton discovered the Britton
6 Property had been entered upon and the locks had been changed.

7 5.12 Plaintiff Britton called the numbers for the lender and LPS Field Services
8 written on the sticker. Plaintiff Britton was told by an LPS customer service representative
9 that she would receive a prompt return phone call but she did not receive a phone call until
10 days later.

11 5.13 LPS Field Services did not remove its locks or lock box from the Britton
12 Property, despite being contacted by Plaintiff Britton.

13 5.14 LPS Field Services did not replace the original locks upon the Britton Property
14 despite being contacted by Plaintiff.

15 5.15 Plaintiff Britton was later provided a key to enter the Britton Property through
16 the garage door.

17 5.16 Upon entering the home, Plaintiff Britton discovered the home had been
18 significantly damaged from LPS Field Services' entry, and that a substantial amount of her
19 personal property was missing.

20 5.17 Plaintiff Britton reported the missing items and the damage to LPS Field

1 Services, and requested return of the missing property and reimbursement and/or repairs to
2 the damaged property.

3 5.18 Specifically, Plaintiff Britton reported that many fixtures in the home were
4 broken, including her toilet in her newly remodeled bathroom, which left a mess of human
5 waste and debris.

6 5.19 Additionally, Plaintiff Britton reported that personal property missing from
7 the home included a 1991 Jeep Cherokee, as well as kitchen tiles, mud, grout, paint and
8 paint supplies.

9 5.20 LPS Field Services refused to return the missing property, to reimburse her,
10 or to repair the damaged property.

11 5.21 To date, LPS Field Services has not repaired the damage it caused to the
12 Britton Property and has not reimbursed her for the costs to repair such damage or the lost
13 rental value during the time she was denied the full use and enjoyment of her real and
14 personal property.

15 5.22 LPS Field Services has not returned or paid for the personal property it
16 removed from the Britton Property.

17 5.23 The exact value of the personal property converted from the Britton Property
18 is unknown at this time, but is believed to exceed \$1,000.

19 5.24 The exact value of the damage to the Britton Property is unknown at this time,
20 but multiple doors and locks suffered damage and the bathroom sustained significant

1 damage.

2 5.25 The exact value of the precluded rents arising from the denial of the full use
3 and enjoyment of the real and/or personal property is unknown at this time.

4 5.26 On information and belief, LPS Field Services charged its client and received
5 fees and/or profited from the pre-foreclosure actions it took upon the Britton Property. LPS
6 Field Services is liable in restitution for the ill-gotten profits received as a result of its
7 unlawful actions. The exact value of this profit is unknown at this time, but is believed to
8 exceed \$100.

9 5.27 On information and belief, the actions and inactions alleged above are part of
10 LPS Field Services' common business acts and practices.

11 **Representative Plaintiff Larson**

12 5.28 Plaintiff Larson is yet another example of LPS Field Services' common
13 pattern and practice of unlawfully entering upon Washington borrowers' properties in
14 advance of completing a lawful foreclosure, damaging borrowers' real property, , and
15 denying borrowers their exclusive right to the full use and enjoyment of their property
16 prior to the completion of a foreclosure. Moreover, Plaintiff Larson is an example of LPS
17 Field Service's unlawful conduct even after *Jordan*.

18 5.29 Plaintiff Larson is the owner of real property located at 5501 NE 49th Street,
19 Vancouver, Washington (the "Larson Property").

20 5.30 Within the applicable statutes of limitation LPS Field Services or its agents

1 forcibly entered the Larson Property without Mr. Larson's consent or the permission of a
2 court of competent jurisdiction.

3 5.31 Plaintiff Larson was the owner of the Larson Property when it was entered
4 upon by LPS Field Services.

5 5.32 At the time of the entry, the loan securing the Larson Property was in default,
6 but no foreclosure proceedings had been initiated.

7 5.33 At the time of the entry, the form deed of trust provision purporting to
8 authorize LPS Field Services' presence on the Larson Property in the event of default was
9 unenforceable as contrary to Washington State Law and had been declared unenforceable
10 as contrary to Washington State Law by the Washington State Supreme Court.

11 5.34 At or around the time of the entry, Plaintiff Larson was in frequent
12 communication with the lender and/or loan servicer for the Larson Property.

13 5.35 At the time of the entry, the Larson Property was neither vacant nor abandoned
14 nor left unsecure. The property was Plaintiff Larson's place of residence.

15 5.36 While on the property, LPS Field Services or its agents removed, destroyed,
16 and replaced Plaintiff Larson's locks and conducted interior inspections and property
17 preservation measures in the home and other buildings. LPS and/or its agents damaged the
18 door and lock on the Larson Property in order to gain entry.

19 5.37 While on the property, LPS Field Services changed the locks on the back door
20 and placed a lock-box upon the Larson Property. LPS Field Services also left behind a flyer

1 stating that it had changed the locks.

2 5.38 Upon returning to the Larson Property, Plaintiff Larson discovered that the
3 Larson Property had been entered upon and the lock on the back door had been destroyed
4 and changed and a lock box had been placed on the property.

5 5.39 LPS Field Services received revenue and profit as a result of its forcible
6 entries, interior inspections, and property preservation measures on the Larson Property.
7 On information and belief, those revenues and profits were charged to and paid by Jeremy
8 Larson in connection with his residential mortgage.

9 5.40 On information and belief, LPS relied on the Entry Provisions to conduct its
10 forcible entries, interior inspections, and property preservation measures on the Larson
11 Property.

12 5.41 At no time did LPS Field Services or its agent remove its lock(s), lock box(es),
13 padlock(s), or hasps from the Larson Property, return or replace the original locks upon the
14 Larson Property, or reach out to Plaintiff Larson and offer to restore exclusive possession
15 of the property. Nor did LPS Field Services or its agent disgorge (or offer to disgorge) the
16 revenue received as a result of its entry, inspection, and property preservation activities on
17 the Larson Property. The lock and lock box remain on the Larson Property today.

18 5.42 The value of the damage to the Larson Property is unknown at this time, but
19 the existing door locks that were destroyed and converted have a replacement value that is
20 estimated to exceed \$100.00.

1 5.43 The reasonable rental value damage arising from the denial of the full use and
2 enjoyment of the Larson Property is unknown at this time.

3 5.44 The exact value of the wrongful revenue generated by the unlawful entry and
4 property preservation activities is unknown at this time.

5 5.45 On information and belief, the actions and inactions alleged above are part of
6 LPS Field Services' common business acts and practices.

7 **VI. PROPRIETY OF CLASS ACTION PROSECUTION**

8 **Proposed Class Definition**

9 6.1 The members of the proposed Class include all individuals:

10 (a) who own or owned real residential property in Washington State subject
11 to a loan that was in default;

12 (b) which property, within the applicable statute of limitations, was entered
13 upon by LPS Field Services and/or its agents prior to the completion of
14 any judicial or non-judicial foreclosure; and

15 (c) which entry upon the property by LPS Field Services was the proximate
16 cause of damage to the homeowner by:

17 (i) damaging the homeowner's real or personal property; and/or

18 (ii) damaging, destroying, or converting the homeowner's personal
19 property or belongings; and/or

20 (iii) generating fees or revenue for the benefit of LPS or

its agents at the expense of the homeowner; and/or

(iv) interfering with the homeowner's exclusive right to the full use and enjoyment of the home.

CR 23(a)(1): Numerosity

6.2 The exact number of persons and/or entities similarly situated to the Representative Plaintiffs is currently unknown, but LPS concedes that the number of similarly situated persons exceed 100 (ECF No.1).

6.3 LPS Field Services holds itself out as one of the largest mortgage field services company in the country.

6.4 For these reasons, it is estimated that the number of persons similarly situated to the Representative Plaintiffs number in the thousands; therefore, joinder of each individual proposed Class Member is impracticable.

6.5 The exact number of persons similarly situated to the Representative Plaintiffs may be identified from LPS Field Services' records of residences serviced in Washington State during the applicable statute of limitations, and such persons may be identified with particularity through appropriate judicial discovery procedures, such that it would be possible to give such persons actual notice of these proceedings, if required.

CR 23(a)(2): Commonality

6.6 There are questions of law and fact common among the claims of the proposed Class Members, including but not limited to:

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- 1 (a) the common actions LPS Field Services takes on the proposed Class
2 Members' properties prior to completion of foreclosure;
- 3 (b) LPS Field Services' common policies or practices vis-à-vis actions it
4 takes upon the proposed Class Members' properties;
- 5 (c) LPS Field Services' common policies or practices for obtaining agents to
6 perform the actions it takes upon the proposed Class Members' properties;
- 7 (d) The manner in which LPS Field Services instructs or trains its agents that
8 take action upon the proposed Class Members' properties;
- 9 (e) The level of control LPS Field Services has over its agents who take action
10 on the proposed Class Members' properties;
- 11 (f) The level of supervision and oversight LPS exercises over its agents who
12 take action on proposed class members' properties; and
- 13 (g) LPS Field Services' common policies or practices for generating revenue
14 from the actions it takes upon proposed class members' properties.

15 6.7 Additional common questions of law and fact are addressed below under *CR*
16 *23(b)(3): Predominance*.

17 ***CR 23(a)(3): Typicality***

18 6.8 The claims of the Representative Plaintiffs are typical of the claims of the
19 Class.

20 6.9 Plaintiff Britton owned the Britton Property at the time it was entered upon

1 by LPS Field Services.

2 6.10 Likewise, Plaintiff Larson owned the Larson Property at the time it was
3 entered upon by LPS Field Services. Moreover, Plaintiff Larson owned the Larson Property
4 and the Larson Property was entered upon by LPS Field Services after the Washington
5 State Supreme Court's opinion in *Jordan v. Nationstar*.

6 6.11 As such, Representative Plaintiff Britton, Representative Plaintiff Larson, and
7 all Members of the proposed Class own or owned real property in Washington State, who,
8 prior to completion of any judicial or non-judicial foreclosure, had their property entered
9 upon by LPS Field Services or its agents for purposes of conducting preservation services
10 and inspections upon their property, had their real or personal property located thereon
11 damaged and/or removed by LPS Field Services or its agents, and were denied the
12 exclusive right to fully use and enjoyment of their real and/or personal property by LPS
13 Field Services or its agents.

14 6.12 As a result, Representative Plaintiff, Representative Plaintiff Larson, and all
15 putative Class Members have been damaged by LPS Field Services' actions, which actions
16 constitute common violations of laws enacted for the protection of Washington State
17 citizens.

18 6.13 Furthermore, LPS Field Services' defenses to the claims of Representative
19 Plaintiffs and the proposed Class Members will be identical due to: (i) LPS Field Services'
20 reliance on a form of deed of trust provision purporting to allow so-called preservation

1 services; and (ii) LPS Field Services' common policies and practices vis-à-vis its retention
2 and supervision of vendors, performance of preservation services, scope of preservation
3 services performed, its response to consumer complaints, and its response to borrower
4 requests for repair to and return of their property and requests for restoration of full and
5 unfettered access to their property.

6 6.14 In short, because all claims implicate common facts and questions of law, LPS
7 Field Services' defenses will too.

8 **CR 23(a)(4): Adequacy of Representation**

9 6.15 Representative Plaintiffs will fairly and adequately protect the interests of the
10 Class.

11 6.15.1 Representative Plaintiffs come before this Court as an owners of
12 Property that has been trespassed upon, damaged, converted, and interfered with.

13 6.15.2 Representative Plaintiffs are in the same capacity as any other
14 litigant seeking redress for grievances and class relief for the harm which has occurred.

15 6.15.3 Representative Plaintiffs do not have any interests which are
16 antagonistic to those of the Class, and they are ready and willing to bring this class action
17 in a representative capacity on behalf of the proposed Class.

18 6.16 Plaintiffs' counsel will fairly and adequately prosecute the case on behalf of
19 the proposed Class.

20 6.16.1 Attorneys Jeffers, Danielson, Sonn & Aylward, P.S., are

1 experienced trial attorneys who have engaged in extensive trial practice and have
2 considerable experience in all aspects of class action litigation from several other class
3 action cases.

4 6.16.2 Attorneys Daudt Law, P.L.L.C., are experienced trial attorneys
5 who have engaged in extensive trial practice and have considerable experience in all
6 aspects of class action litigation from several other class action cases.

7 6.16.3 Attorneys Terrell Marshall Law Group, P.L.L.C., are
8 experienced trial attorneys who have engaged in extensive trial practice and have
9 considerable experience in all aspects of class action litigation from several other class
10 action cases.

11 6.16.2 Plaintiffs' counsel have the necessary skills, expertise, and
12 competency to adequately represent the Representative Plaintiffs' interests and those of the
13 Class.

14 **CR 23(b)(2): Injunctive Relief**

15 6.17 LPS Field Services has acted or refused to act on grounds generally applicable
16 to the Plaintiffs and all proposed Class Members, thereby making final injunctive relief
17 appropriate.

18 6.18 As detailed throughout this Complaint, LPS Field Services or its agents have
19 a common practice of forcibly entering upon Washington borrowers' properties without
20 court order or post-default consent for purposes of conducting property preservation

1 services and inspections thereupon, damaging or removing borrowers' real and/or personal
2 property located therein, and denying borrowers the full use and enjoyment of their real
3 and/or personal property.

4 6.19 LPS Field Services further has the right through agreements and policies to
5 oversee and control its agents in the performance of inspections and so-called property
6 preservation services, and requires its agents to perform destructive and disruptive acts
7 upon Plaintiff Britton, Plaintiff Larson, and proposed class members' homes.

8 6.20 Although LPS Field Services is well aware that its agents commonly remove
9 personal property from borrowers' properties, including removal of the borrowers' locks,
10 even without LPS Field Services' instruction to do so while conducting property
11 preservation measures and inspections, LPS Field Services fails to properly supervise its
12 agents while conducting property preservation measures and inspections to prevent such
13 removals. LPS Field Services has received complaints from borrowers about missing or
14 damaged personal property yet continues to send agents unsupervised onto borrowers'
15 properties and into borrowers' homes and buildings.

16 6.21 LPS Field Services further has a common practice of not repairing, replacing,
17 or reimbursing borrowers when they report property damage as a result of the above acts.

18 6.22 LPS Field Services also has a common practice of charging fees to and
19 receiving fees from its clients and therefore profiting from its common, above-described
20 actions.

1 6.23 LPS Field Services' common practices interfere with the homeowner's
2 exclusive right to possess and enjoy their home.

3 6.24 LPS Field Services has acted in such manners as applicable to Representative
4 Plaintiffs and all Class Members.

5 6.25 LPS Field Services has acted in such manners as applicable to Representative
6 Plaintiff Britton, Representative Plaintiff Larson, and all proposed class members.

7 6.26 On information and belief, after the *Jordan* Decision, LPS Field Services
8 never removed its locks from Representative Plaintiff Britton's, Representative Plaintiff
9 Larson's, or any other proposed class members' homes. In fact, LPS Field Services appears
10 to have conducted its first lock changes upon Plaintiff Larson's home *after* the *Jordan*
11 decision.

12 6.27 After the Supreme Court's *Jordan v. Nationstar* decision, LPS Field Services
13 never affirmatively reached out to Representative Plaintiff Britton, Representative Plaintiff
14 Larson, or, on information and belief, any other proposed class member offering to restore
15 to them their right to exclusive possession.

16 6.28 Therefore, on information and belief, LPS Field Services continues to
17 maintain locks on proposed class members' properties prior to the conclusion of
18 foreclosure, even after the *Jordan* Decision, and continues to fail to return removed locks
19 from class members' properties to the class members.

20 6.29 For these reasons, Representative Plaintiffs seek class-wide injunctive relief

1 against LPS Field Services to restrain and enjoin these behaviors.

2 **CR 23(b)(3): Predominance**

3 6.30 “Considering whether questions of law or fact common to class members
4 predominate’ begins, of course, with the elements of the underlying cause of action.”
5 *Abdullah v. U.S. Sec. Assoc., Inc.*, 731 F.3d 952, 964 (9th Cir. 2013) (quoting *Erica P.*
6 *John Fund, Inc. v. Halliburton Co.*, 563 U.S. 804, 131 S. Ct. 2179, 2184 (2011)).

7 6.31 “A plaintiff class need not prove that each element of a claim can be
8 established by classwide proof[.]” *In re Whirlpool Corp. Front-Loading Washer Prods.*
9 *Liab. Litig.*, 722 F.3d 838, 858 (6th Cir. 2013).

10 6.32 Rather, the Court should “balance against the issues requiring individualized
11 proof, any questions of law or fact common to . . . class members” *Kelly v. Microsoft*
12 *Corp.*, 2010 WL 3556196, at *1 (9th Cir. Sept. 14, 2010) (quoting *In re Wells Fargo Home*
13 *Mortg. Overtime Pay Litig.*, 571 F.3d 953, 959 (9th Cir. 2009): “it is reversible error to
14 ‘rely[] on [one factor] to the near exclusion of other factors relevant to the predominance
15 inquiry’”).

16 6.33 Thus, certification is appropriate unless individual questions “*overwhelm*
17 *questions common to the class.*” *Amgen, Inc. v. Conn. Retirement Plans & Trust Funds*, -
18 -- U.S. ---, 133 S.Ct. 1184, 1193, 1196, 1204, 185 L.Ed.2d 308 (2013) (emphasis added).

19 6.34 Numerous legal and factual questions pertaining to the proposed Class
20 Members predominate over any questions affecting only individual members, including

1 but not limited to the following:

2 6. 34.1 Form Contract Provisions. The Plaintiffs will be able to establish
3 the elements of the claims using evidence common to the Class because LPS Field Services
4 derives its purported authority to enter upon borrowers' properties from unlawful form
5 contract provisions applicable to all borrowers' properties. These contract provisions are
6 substantively identical in all cases. All such substantively identical form deed of trust
7 provisions were declared on July 7, 2016, to be "in direct conflict with state law and . . .
8 unenforceable" by the Washington Supreme Court in *Jordan v. Nationstar Mortgage*.
9 Such provisions are common to all putative Class Members and do not involve
10 individualized inquiries.

11 6. 34.2 The Identity of the Property Owner. Still another element subject
12 to common proof is the identity of the property owner. As the proposed Class concerns
13 only those properties entered upon by LPS Field Services prior to completion of any
14 judicial or non-judicial foreclosure, there are no individual questions concerning the
15 identity of the rightful property owner—the borrower owned the property at the time of
16 entry, not anyone else. This is further detailed in the *Jordan v. Nationstar Mortgage*
17 opinion, in which the Washington Supreme Court reaffirmed the borrower's right to
18 exclusive possession of the property prior to the completion of any foreclosure
19 proceedings.

20 6. 34.3 LPS Field Services' Relationship with its Vendors. The

1 Plaintiffs will be able to establish the elements of the claims using evidence common to
2 the Class because the primary inquiries involve *LPS Field Services*' conduct. That is, LPS
3 Field Services has a common policy and practice of training and instructing its agents to
4 enter properties prior to completion of any foreclosure. LPS Field Services further instructs
5 its agents to use whatever means necessary to enter properties, including drilling out the
6 borrower's locks, and, once inside, agents are trained and instructed to, *inter alia*, "trash
7 out" the premises by taking and carrying away personal property found therein. Thus,
8 evidence common to all Members of the Class includes: LPS Field Services' selection of
9 vendors and screening of employees; LPS Field Services' training of vendors; LPS Field
10 Services' instructions to its vendors; and LPS Field Services' oversight of its vendors'
11 work. This theory is common to all putative Class Members and does not involve
12 individualized inquiries.

13 6. 34.4 The Conduct of LPS Field Services' Vendors in Entering and
14 Damaging or Converting Borrowers' Property. Plaintiffs will be able to establish the
15 elements of all claims using evidence common to the Class because, as to all putative Class
16 Members, LPS Field Services' vendors acted similarly while on borrowers' properties;
17 namely, they committed unauthorized entry upon borrowers' properties, conducted
18 unlawful forcible entries involving damage to existing locks, doors and/or windows,
19 damaged and converted the borrowers' locks and personal property found thereon, and
20 interfered with borrowers' full use and enjoyment of their property. This theory is common

1 to all putative Class Members and does not involve individualized inquiries.

2 6. 34.5 LPS Field Services' Policies and Procedures for Responding to
3 Customer Complaints. Plaintiffs will be able to establish the elements of the claims using
4 evidence common to the Class because LPS Field Services' policies and procedures for
5 responding to customer complaints of its agents' entry, conversion of borrowers' property,
6 and interference with borrowers' full use and enjoyment of their property are the same in
7 all cases. That is, LPS Field Services does not immediately restore possession of the
8 property to the owner, does not return or replace the property's original locks, does not
9 remove its locks from the property upon demand, did not offer to or remove its locks from
10 the property after the *Jordan* decision, and does not return or replace personal property
11 removed from the property. These facts are common to all putative Class Members and do
12 not involve individualized inquiries.

13 6. 34.6 Class Members' Damages. Plaintiffs will be able to establish the
14 elements of the claims using evidence common to the Class because all putative Class
15 Members suffered the same type of damage; namely, injury to real and/or personal property
16 from LPS Field Services' forcible entry, damage to, and/or conversion of personal
17 property, and interference with the full use and enjoyment of the property by the borrower.
18 Plaintiffs will also be able to establish LPS Field Service's liability in restitution to the
19 Class for profits it received as a result of its above-described unlawful conduct, using
20 evidence common to the Class because LPS Field Service's fee, payment, and profit

1 policies and procedures are common to the Class. These facts are common to all putative
2 Class Members and will not require individualized inquiries.

3 6.35 As a result, the prosecution of a class action is superior to other available
4 methods for the fair and efficient adjudication of this controversy.

5 6.36 Individual actions are not likely to seek sufficient damages to warrant
6 assuming the cost of litigation. Here, the damages sustained by each putative Class
7 Member are not large, generally including damage to doors, windows, and/or personal
8 property within the residence, as well as the fair rental value of each putative Class
9 Member's home during the time in which LPS Field Services interfered with the putative
10 Class Member's exclusive right to possession, and the ill-gotten profits that LPS Field
11 Services must disgorge from the activities unlawfully conducted on each putative Class
12 Member's property. Therefore, each putative Class Member will have difficulty
13 maintaining an individual action, and a class action is a superior method to adjudicate their
14 claims.

15 6.37 In addition, thousands of individual actions would greatly congest the
16 Washington State courts.

17 6.38 A class action is the most cost-effective way for consumers to prevent future
18 economic and pecuniary loss to thousands of Washington citizens and members of the
19 public at large by LPS Field Services.

20 6.39 This action is superior to any other available method for the fair and efficient

1 adjudication of the controversy.

2 **VII. FIRST CAUSE OF ACTION:**
3 **COMMON LAW TRESPASS**

4 7.1 LPS Field Services and/or its agents wrongfully and intentionally entered onto
5 the Britton Property, the Larson Property, and properties owned by borrowers throughout
6 the state of Washington in advance of the conclusion of any foreclosure proceedings.

7 7.2 As detailed by the Washington Supreme Court in *Jordan*, prior to the
8 completion of any foreclosure proceedings, the borrower has the exclusive right to possess
9 their property, and LPS Field Services has no legal right to be there. Therefore, LPS Field
10 Services' entry upon borrowers' properties is an invasion that affects the borrower's
11 interest in their exclusive possession of the property.

12 7.3 LPS Field Services' intent to invade borrowers' possessory interests is
13 demonstrated by its claimed authority purportedly granted in its form deed of trust
14 provisions, which claim to permit such entries in the event of default or abandonment of
15 properties — which the Washington Supreme Court invalidated.

16 7.4 Such intent to enter is further evidenced by LPS Field Services' or its agents'
17 acts of changing borrowers' locks, performance of so-called "preservation services" on
18 borrowers' properties, and the notices left for homeowners to contact LPS Field Services
19 or its agents to obtain entry to their properties or further information.

20 7.5 LPS Field Services remained on the Britton Property, the Larson Property,

1 and on borrowers' properties during the period of initial entry and thereafter by maintaining
2 its locks upon the property for the purpose of facilitating future entries by LPS Field
3 Services and to further require borrowers to contact LPS Field Services and/or its agents
4 in order to regain full access to their properties.

5 7.6 It was reasonably foreseeable that LPS Field Services' unauthorized and
6 unlawful entries onto borrowers' properties in advance of the conclusion of any foreclosure
7 proceedings would invade borrowers' possessory interests in those properties.

8 7.7 As a result of LPS Field Services' acts as detailed above, Representative
9 Plaintiff Britton, Representative Plaintiff Larson, and putative class members suffered the
10 damages detailed herein in an amount to be proven at trial.

11
12 **VIII. SECOND CAUSE OF ACTION:
INTENTIONAL TRESPASS (RCW 4.24.630)**

13 8.1 LPS Field Services entered onto the Britton Property, the Larson Property and
14 properties owned by borrowers throughout the state of Washington.

15 8.2 LPS Field Services intentionally, unreasonably, and forcibly entered onto
16 such properties, and intentionally and unreasonably damaged or removed property thereon.

17 8.3 For example, LPS Field Services entered the Britton Property, damaged locks
18 or doors on the Britton Property, kept or destroyed the locks, damaged or removed personal
19 property in the Britton Property, and denied Representative Plaintiff Britton the full use
20 and enjoyment of her personal and real property on an on-going basis by maintaining its

1 locks upon the property to facilitate future on-going entries.

2 8.4 Likewise, LPS Field Services entered the Larson Property, damaged locks or
3 doors on the Larson Property, kept or destroyed the locks, and denied Representative
4 Plaintiff Larson the full use and enjoyment of his personal and real property on an on-going
5 basis by maintaining its locks upon the property to facilitate future on-going entries.

6 8.5 LPS Field Services intended to act in this manner, as evidenced by its
7 instruction to its agents to engage in these behaviors, and its deliberate acts to engage in
8 these behaviors. LPS Field Services' intentionality is further evidenced by its instructions
9 to its agents to perform lock changes upon and maintain its locks on borrowers' properties
10 even after the *Jordan* Decision, and use those locks to enter the properties, conduct
11 property preservation and inspection services therein, and remove personal property.

12 8.6 LPS Field Services, as a business operating in Washington state, knew or
13 should have known of Washington law, including RCW 7.28.230, that prohibits is property
14 preservation and inspection services. On information and belief, LPS Field Services made
15 no effort, or no reasonable effort, to determine if its conduct complied with Washington
16 law.

17 8.7 LPS Field Services knew or had reason to know that it had no authorization
18 to engage in such behaviors because the form contract provisions it relied upon—while
19 undisputedly unlawful—nevertheless do not authorize damage to real or personal property
20 and do not authorize interference with the owner's (or other lawful occupant's) full use and

1 enjoyment of the property.

2 8.8 On information and belief, LPS Field Services knew or should have known
3 that its conduct violated long-established Washington law, specifically RCW 7.28.230. On
4 information and belief, by engaging in the conduct anyway, LPS Field Services intended
5 to violate long-established Washington law, including RCW 7.28.230.

6 8.9 Further, the Supreme Court's opinion in *Jordan* confirmed that such pre-
7 foreclosure lock changes and other property preservation activities unlawfully interfere
8 with the homeowner's exclusive right to pre-foreclosure possession. Nonetheless, on
9 information and belief LPS Field Services conducted new lock changes after the *Jordan*
10 opinion and has never removed or attempted to remove the locks that remained on class
11 members' properties prior to the conclusion of any foreclosure even after the *Jordan*
12 Decision, and it continues to enter such properties. Stated otherwise, LPS Field Services
13 continues to interfere with class members' exclusive right to possession prior to the
14 completion of foreclosure even after the Supreme Court has clearly confirmed that such
15 interference is unlawful.

16 8.10 LPS Field Services engaged in the above actions on an on-going basis and
17 wholly without permission of Representative Plaintiff Britton, Representative Plaintiff
18 Larson, other Washington borrowers, or any court of lawful jurisdiction.

19 8.11 It was substantially certain that LPS Field Services' and/or its agents' above-
20 described actions would substantially damage the Britton Property, the Larson Property,

1 and the properties of other Washington borrowers, including, but not limited to, by the
2 forcible removal and destruction of Plaintiff Britton's, Plaintiff Larson's, and other
3 borrowers' locks.

4 8.12 LPS Field Services' actions are part of its common practice relative to
5 countless Washington borrowers.

6 8.13 As a result, LPS Field Services wrongfully caused waste or injury to these
7 properties or wrongfully injured personal property or improvements to real estate on land.

8 8.14 LPS Field Services' actions above each constitute separate and on-going
9 violations of RCW 4.24.630.

10 8.15 As a direct and proximate result of LPS Field Services' and/or its agents'
11 violations of RCW 4.24.630, Representative Plaintiff Britton, Representative Plaintiff
12 Larson, and putative class members have suffered damages to their property in an amount
13 to be proven at trial.

14 8.16 LPS Field Services is liable to Representative Plaintiff Britton, Representative
15 Plaintiff Larson, and putative class members for treble the amount of damages caused by
16 its violations of RCW 4.24.630.

17 8.17 LPS Field Services is liable to Representative Plaintiff Britton, Representative
18 Plaintiff Larson, and putative class members for their reasonable attorneys' fees and costs
19 pursuant to RCW 4.24.630.

20 **IX. THIRD CAUSE OF ACTION:**

**SECOND AMENDED COMPLAINT FOR CLASS
ACTION AND DAMAGES**

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NEGLIGENT TRESPASS

9.1 Trespass occurs when a person intentionally or negligently intrudes onto the property of another. *Jackass Mt. Ranch v. S. Columbia Basin Irr. Dist.*, 305 P.3d 1108, 1122, 175 Wn. App. 374 (2013).

9.2 As Plaintiffs' lender, and/or the servicer of Plaintiffs' loans, LPS Field Services owed Plaintiffs a duty to act reasonably and take reasonable measures to analyze the propriety of its conduct in connection with such loans and carry out such conduct as a reasonable person would in the same or similar circumstances.

9.3 Further, upon learning that its practices of ordering vendors to enter Washington borrowers' properties, change or maintain locks, and conduct property preservation services and interior inspections therein caused harm, LPS Field Services owed Plaintiffs a duty to mitigate reasonably foreseeable harm stemming as a result of that conduct.

9.4 On information and belief, LPS Field Services made no sufficient effort to determine if its conduct in connection with these loans complied with Washington law.

9.5 LPS Field Services breached its duties when it entered the properties of Plaintiffs or directed its vendors to enter upon the properties of Plaintiffs and caused damage and interfered with Plaintiffs' right to exclusive possession. LPS Field Services likewise breached its duties when it continued to maintain its locks on Plaintiffs' properties and conduct further interior inspections and property preservation activities even after the

1 *Jordan* Decision.

2 9.6 On information and belief, prior to the *Jordan* Decision, LPS Field Services
3 received a number of complaints from other borrowers challenging pre-foreclosure lock
4 changes and personal property removals. On information and belief, LPS Field Services
5 breached its duty to Plaintiffs by failing to change its policies and practices in response to
6 these complaints and continuing to enter and/or maintain locks on Plaintiffs' properties.

7 9.7 As a result of these breaches, LPS Field Services proximately caused
8 Plaintiffs to suffer harm, including damage to their real property, the loss of and damage
9 to their personal property, interference with their exclusive right to pre-foreclosure
10 possession, and restitution, in amounts to be determined at trial. If LPS Field Services had
11 reasonably analyzed the lawfulness of its conduct and/or changed its policies and practices
12 in response to prior complaints, Plaintiffs would not have suffered the harm described
13 above.

14 9.8 LPS Field Services' actions are part of its common practice relative to
15 countless Washington borrowers.

16 9.9 As a result, LPS Field Services is liable for negligently trespassing upon the
17 properties of Plaintiff Britton and Plaintiff Larson. LPS Field Services is similarly liable to
18 members of the proposed class.

19 **X. FOURTH CAUSE OF ACTION:**
20 **VIOLATION OF CONSUMER PROTECTION ACT (RCW 19.86, *et seq.*)**

10.1 LPS Field Services Engaged in Unfair or Deceptive Acts and Practices.
SECOND AMENDED COMPLAINT FOR CLASS
ACTION AND DAMAGES

1 10.1.1 The following actions of LPS Field Services constitute unfair
2 *and* deceptive acts and practices for the purposes of RCW 19.86, *et seq.*: LPS Field
3 Services' common practices of unlawfully entering borrowers' properties in advance of the
4 conclusion of any foreclosure proceedings; conducting forcible entries via destruction or
5 removal of existing door locks; keeping the locks; damaging doors and windows,
6 converting personal property; refusing to refund, repair, or compensate for damage caused;
7 generating revenue, fees, and charges; denying owners or legal occupants the full use and
8 enjoyment of their real and/or personal property; and failing to respond or timely respond
9 to class members' demands for return of, repairs to, and access to their property.

10 10.1.2 These acts are unfair because such practices are a clear violation
11 of well-established Washington state law, and the deed of trust provisions purporting to
12 authorize them unenforceable as contrary to law.

13 10.1.3 These acts are further unfair because of the unequal bargaining
14 power between the individual homeowner or occupant and a large, multi-national company
15 who (or on whose behalf its agents) forcibly enters properties, destroys existing locks,
16 places its own locks on the properties for the express purpose of providing future, un-
17 noticed entries, interferes with owners' or legal occupants' full use and enjoyment of the
18 properties, converts and damages personal property located upon the properties, and
19 refuses to refund or replace damaged or converted property.

20 10.1.4 These acts are also unfair because they allowed LPS Field

1 Services and/or its agents to enter borrowers' properties without permission, without court
2 order, and without advanced notice, in order to generate revenue from inspections and
3 property preservation measures conducted therein. Such acts offend well-established
4 Washington law, including RCW 7.28.230.

5 10.1.5 These acts are deceptive because, when LPS Field Services or its
6 agents perform them, the property owner is unaware that they are occurring, and such acts
7 are not authorized via any form deed of trust provision.

8 10.1.6 These acts are further deceptive because the acts themselves—as
9 well as the notices LPS Field Services and/or its agents post on borrowers' properties—
10 communicate wrongfully to the borrower that LPS Field Services and its agents have the
11 right and duty to possess and/or enter the borrower's home prior to the completion of any
12 foreclosure.

13 10.1.7 These acts are further deceptive because the notices that LPS
14 Field Services or its agents place on the borrowers' properties do not inform the borrowers
15 of their right to the exclusive possession of their property or their right to have their
16 property returned or repaired.

17 10.1.8 These acts are also deceptive because LPS Field Services
18 continued to maintain its locks on borrowers' homes even after the *Jordan* Decision,
19 without offering to remove them or notifying the borrower of their right to exclusively
20 possess their property.

1 10.1.9 LPS Field Services engaged in similar unfair and deceptive acts
2 and practices vis-à-vis hundreds (or thousands) of Washington borrowers.

3 10.2 LPS Field Services' Acts Occurred in Trade or Commerce. LPS Field
4 Services' unfair and deceptive acts occurred in trade or commerce because LPS Field
5 Services represents itself to be one of the largest lenders in the country and was the lender
6 in charge of servicing the Britton Property, the Larson Property, as well as proposed class
7 members' properties at the time of the challenged acts.

8 10.3 LPS Field Services' Acts Impact the Public Interest.

9 10.3.1 LPS Field Services' unfair or deceptive acts impacted the public
10 interest because they were committed in the course of LPS Field Services' business, LPS
11 Field Services advertises similar services to the public in general, and LPS Field Services
12 and Representative Plaintiff Britton, Representative Plaintiff Larson, and proposed class
13 members (as individual consumers) occupy unequal bargaining positions.

14 10.3.2 LPS Field Services engages in a course of conduct whereby the
15 same or similar unfair or deceptive acts are repeated as to borrowers across Washington
16 State.

17 10.3.3 There exists a real and substantial potential for repetition of LPS
18 Field Services' conduct in the future because, on information and belief, LPS Field
19 Services is one of the largest lenders in the country and LPS Field Services continues to
20 maintain its locks and enter upon Washington borrowers' properties prior to the completion

1 of foreclosure and generate revenue as a result.

2 10.4 Causation.

3 10.4.1 Causation is satisfied through the common proof that LPS Field
4 Services' policy and practice is to instruct its agents to enter borrowers' homes, to do so
5 forcibly, to convert personal property therein, and to place and maintain its own locks, lock
6 boxes, padlocks, and hasps on borrowers' properties.

7 10.4.2 These common instructions proximately cause borrowers'
8 damages because, *but for* LPS Field Services' instructions to its agents, there would be no
9 entry, conversion, or interference resulting in damage to borrowers.

10 10.5 Injury to Business or Property. As a direct and proximate result of LPS Field
11 Services' unfair or deceptive acts as set forth above, Representative Plaintiff Britton,
12 Representative Plaintiff Larson, and proposed class members have suffered injury to their
13 properties in an amount to be proven at trial.

14 10.6 LPS Field Services' above-listed unfair or deceptive acts constitute violations
15 of RCW 19.86, *et seq.*

16 10.7 LPS Field Services is liable to Representative Plaintiff Britton, Representative
17 Plaintiff Larson, and proposed class members for treble the amount of their damages
18 caused by the violations of RCW 19.86, *et seq.*

19 10.8 LPS Field Services is liable to Representative Plaintiff Britton, Representative
20 Plaintiff Larson, and proposed class members for their reasonable attorneys' fees and costs

1 pursuant to RCW 19.86, *et seq.*

2 **XI. FIFTH CAUSE OF ACTION:**
3 **NEGLIGENT SUPERVISION**

4 11.1 LPS Field Services owed Representative Plaintiff Britton and Representative
5 Plaintiff Larson a duty to act as a reasonably careful person would under the same or similar
6 circumstances, including a duty to reasonably assess the lawfulness of its conduct. Upon
7 learning of harm caused by its property preservation activities, LPS Field Services owed
8 Representative Plaintiff Britton and Representative Plaintiff Larson a duty to mitigate
9 foreseeable harm resulting from those activities.

10 11.2 On information and belief, LPS Field Services has agreements, policies,
11 and/or procedures instructing its vendors that they may not remove non-hazardous personal
12 property prior to the completion of foreclosure from Washington borrowers' properties
13 without express order by LPS Field Services.

14 11.3 LPS Field Services' vendors are its agents and, on information and belief, LPS
15 Field Services expects its vendors to comply with all requirements set forth in LPS Field
16 Services' agreements, policies, and/or procedures. On information and belief, LPS Field
17 Services has the right to control its vendors' conduct and to mitigate foreseeable loss
18 resulting from that conduct. However, on information and belief, LPS Field Services
19 engages in little to no direct oversight when its vendors are completing work in the field.

20 11.4 On information and belief, despite its policies and prior to entering
Representative Plaintiff Britton and Representative Plaintiff Larson's Properties, LPS Field
SECOND AMENDED COMPLAINT FOR CLASS
ACTION AND DAMAGES

1 Services received direct complaints from borrowers indicating that its personal property
2 policies were not being followed. On information and belief, complainants alleged that
3 LPS Field Services and/or its agents removed and/or damaged personal property prior to
4 the completion of foreclosure during the completion of property preservation and/or
5 inspection activities, including, but not limited to, the removal of complainants locks. On
6 information and belief, LPS Field Services did not change its policies and practices in
7 response to these borrower complaints: it did not increase supervision over its vendors in
8 response to these borrower complaints. A reasonable actor in similar circumstances would
9 have changed its policies or practices in response to these complaints.

10 11.5 Even after receiving such complaints, LPS Field Services ordered one or more
11 vendors to change one or more locks and enter the interior of the Britton Property and
12 Larson Property. On information and belief, each of these vendors were sent to the
13 property unsupervised.

14 11.6 While on the Britton Property, one or more vendor removed Plaintiff Britton's
15 personal property. This unlawful removal was foreseeable, particularly in light of the
16 complaints discussed above.

17 11.7 While on the Larson Property, one or more vendor removed and destroyed
18 Plaintiff Larson's back door lock. This removal was foreseeable, particularly in light of the
19 complaints discussed above.

20 11.8 Plaintiff Britton's personal property was never returned, and Plaintiff Britton

1 was not reimbursed for missing or damaged personal property.

2 11.9 By failing to take reasonable action in response to the complaints discussed
3 above, and sending vendors to the Britton and Larson Properties, Britton and Larson
4 suffered pre-foreclosure damage or loss of their personal property.

5 11.10 LPS Field Services' actions are part of its common practice relative to
6 countless Washington borrowers.

7 11.11 As a result, LPS Field Services is liable to Plaintiffs Britton and Larson for
8 negligently supervising its agents. LPS Field Services is similarly liable to members of the
9 proposed class.

10 11 **XII. PRAYER FOR RELIEF**

12 WHEREFORE, Representative Plaintiffs, and on behalf of others similarly situated,
13 demands judgment against LPS Field Services as follows:

14 1. For entry of a judgment in favor of Representative Plaintiffs and proposed
15 class members against LPS Field Services for damages in an amount to be proven at trial,
16 including treble damages pursuant to RCW 4.24.630, RCW 19.86.090, and/or other
17 applicable law;

18 2. For entry of a judgment in favor of Representative Plaintiffs and proposed
19 class members and against LPS Field Services for reasonable attorneys' fees and costs
20 pursuant to RCW 4.24.630, RCW 19.86.090, and/or other applicable law;

1 3. For an entry of judgment in favor of Representative Plaintiffs, and proposed
2 class members for pre-judgment interest on all damages;

3 4. For injunctive relief restraining LPS Field Services from further violation of
4 RCW 19.86, *et seq.*, as alleged herein; and

5 5. For such other and further relief as the Court deems just and equitable

6 DATED the 12th day of April, 2019.

7 s/ CLAY M. GATENS

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CERTIFICATE OF SERVICE

I hereby certify that on the 12th day of April, 2019, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF System. Notice of this filing will be sent to the parties listed below by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

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DATED at Wenatchee, Washington this 12th day of April, 2019

s/CLAY M. GATENS

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